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10/566,545	01/26/2006	Mitsugi Nomiya	FUIJ22.367 (100794-01038)	5849
26304 7590 09/15/2009 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585				
EXAMINER				
GESESSE, TILAHUN				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

Applicant's arguments filed August 28, 2009 have been fully considered but they are not persuasive.

On page 5, fourth paragraph of applicant's argument, applicant argued that Bodin does not teach the channel utilization rate is at a warning level "at a higher load level (overload)).

The examiner respectfully disagrees. Bodin discloses a mobile cellular radio system, a load balancing is achieved by moving dynamically the borders between any two cells an overloaded cell becomes smaller and neighboring cell larger, see abstract, which means a load balancing "channel utilization rate" is achieved by dynamically moving the borders of cell based on less or more loaded cells (less channel utilization rate or higher channel utilization rate of the cells.

In other word, Bodin discloses occupancy level a cell is higher than critical value X (threshold) (the channel utilization rate is higher than the critical value) of the cell at a warning level (see follow chart fig.4).

On page, third paragraph of applicant's argument, applicant argued that Bodin does not teach the channel utilization rate is at a warning level "at a higher load level (overload)).

The examiner respectfully disagrees. Bodin discloses predicting channel utilization rate (occupancy level) at a particular period of time, at MSC (radio output controller) over the cell is performed and evaluated if the cell is at higher occupancy level "at a warning level"

on page 6, fourth paragraph of response to office correspondence , applicant argued that the office fails to establish a prima facie case of obviousness via claim 2.

The examiner respectively disagrees. An applicant does not have to test all the compounds taught by each reference, "however, where an applicant tests less than all cited compounds, the test must be sufficient to permit a conclusion respecting the relative effectiveness of applicant 's claimed compounds and the compounds of the closest prior art. " Id. (quoting *In re Payne*, 606 F.2d 303, 316, 203 USPQ 245, 256 (CCPA 1979))

In this particular case, Bodin et al discloses sufficient to permit a conclusion respecting the relative effectiveness of applicant 's claimed compounds and the compounds of the closest prior art.

Continuation of 3. NOTE: the added limitation "the radio output control over the first cell is to be performed" raise new issues that would requires further consideration and/or search.

//Tilahun Gesesse//

Primary Examiner, Art Unit 2618